IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ALABAMA SOUTHERN DIVISION

LENORD JACKSON,)
)
Plaintiff,)
)
v.) CIVIL ACTION 07-0168-WS-M
)
WARRIOR & GULF NAVIGATION)
COMPANY,)
)
Defendant.)
0	RDER

On September 19, 2007, the defendant filed a suggestion of death. (Doc. 28). Two days later, counsel for the plaintiff filed another suggestion of death. (Doc. 31). Counsel for the plaintiff was electronically served with both suggestions.

If a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed.

Fed. R. Civ. P. 25(a)(1). Because service was made electronically, it was complete on transmission. *Id.* 5(b)(1)(E).

The ninetieth day after September 19, 2007 was December 18, 2007. Because no motion for substitution has been filed, pursuant to Rule 25 this action is **dismissed** without prejudice.¹

DONE and ORDERED this 20th day of December, 2007.

<u>s/ WILLIAM H. STEELE</u> UNITED STATES DISTRICT JUDGE

¹Because the complaint alleges that the defendant's wrongful conduct occurred on or about September 1, 2006; because it includes a cause of action under the Jones Act; and because the statute of limitations in Jones Act cases is three years, *e.g.*, *Watz v*. *Zapata Off-Shore Co.*, 431 F.2d 100, 111 (5th Cir. 1970), dismissal does not preclude the plaintiff's representative from re-filing suit.